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JUN 16 1998

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

1998 Biennial Regulatory Review --  
Streamlining of Mass Media Applications,  
Rules, and Processes

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MM Docket No. 98-43

**COMMENTS OF ALLBRITTON COMMUNICATIONS COMPANY**

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## **SUMMARY**

In addition to endorsing the Commission's efforts to lessen the burdens of regulatory filings on broadcast licensees, Allbritton Communications Company ("ACC") urges the Commission to adopt additional improvements that would eliminate unnecessary elements of the FCC Form 323 ("Form 323" or "Ownership Report") as well as facilitate the electronic filing of Ownership Reports. Specifically, ACC advocates that, instead of certain cumbersome and outmoded requirements of the existing Form 323, the Commission should:

- permit a single consolidated Ownership Report for all licensee-related corporate entities;
- permit a certification of compliance with the Commission's multiple ownership rules;
- permit a certification and/or explanation of corporate business documents, such as articles of incorporation, by-laws and credit agreements;
- replace the antiquated listing of shares held with simple percentages of vote and equity holdings; and
- eliminate the requirement that the residential addresses of officers, directors, shareholders, or partners appear in any FCC form.

Each of these changes would eliminate needless redundancies between the Form 323 and other of the Commission's forms or otherwise streamline Ownership Reports, making them easier both to submit and to review.

ACC also seeks clarification that items required to be maintained in a station's public inspection file may be removed from the file at the conclusion of the license period to which they pertain -- *i.e.*, upon grant of the first license renewal following their placement in the public file.

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To: The Commission

**COMMENTS OF ALLBRITTON COMMUNICATIONS COMPANY**

Allbritton Communications Company ("ACC"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits these Comments in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding. <sup>1/</sup> In the *Notice*, the Commission requested comments regarding the proposed streamlining of the broadcast application and licensing process. ACC endorses several changes that would streamline the filing of FCC Form 323 ("Form 323" or "Ownership Report") as well as enable the existing Ownership Report requirement to be satisfied by means of an electronic filing. Specifically, ACC respectfully urges the Commission to:

- permit a single consolidated Ownership Report for all licensee-related corporate entities;
- permit a certification of compliance with the Commission's multiple ownership rules;

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<sup>1/</sup> *Notice of Proposed Rule Making, In the Matter of 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, MM Docket No. 98-43 (April 3, 1998) ("*Notice*").

- permit a certification and/or narrative explanation of corporate business documents, such as articles of incorporation, by-laws and credit agreements;
- replace the cumbersome and antiquated listing of shares held with simple percentages of vote or equity holdings; and
- eliminate the requirement that the residential addresses of officers, directors, shareholders, or partners appear in any FCC form.

These changes not only will ease the burden on licensees seeking to satisfy their reporting obligations, but also will facilitate the Commission's review of Ownership Reports by eliminating unnecessary or redundant information. In addition, ACC seeks clarification that items required to be maintained in a station's public inspection file may be removed from the file at the conclusion of the license period to which they pertain -- *i.e.*, upon grant of the first license renewal following their placement in the public file.

#### **I. THE COMMISSION SHOULD STREAMLINE ITS OWNERSHIP REPORT REQUIREMENTS.**

In the *Notice*, the Commission announced its intention to relax its Ownership Reporting requirements in order to "ease the paperwork burden on licensees and permittees." *See Notice* at ¶ 86. As the Commission explained in proposing to require an "annual" Ownership Report to be filed only every four years, such Ownership Reports add "little new information [about] the licensee." *Id.* at ¶ 87. Because the Commission "must approve major ownership changes in advance," Ownership Reports, which "rarely generate challenges or complaints," serve only to notify the Commission of "slight changes in ownership" that do not

amount to a change of control and, as a rule, do not materially affect the practices of the licensee. *Id.* at ¶¶ 86-87.

The Commission is correct in recognizing that Ownership Reports in their current form impose too great an administrative burden to justify the minimal information they provide. Accordingly, in addition to the changes proposed by the Commission with respect to filing requirements, ACC believes several substantive changes in the current reporting requirements are appropriate and should be implemented at this time. <sup>2/</sup> Such changes are necessary to ease the burden on licensees, and, as a practical matter, are prerequisites to the Commission's efforts to employ electronic filing for Ownership Reports. *See Notice* at ¶ 85.

**A. The Commission Should Not Require Separate Ownership Report for Every Corporate Shareholder in a Licensee's Corporate Hierarchy.**

At present, a licensee must file a separate Ownership Report along with multiple, lengthy exhibits, including corporate articles, by-laws, and various stock pledge agreements for each company in its corporate hierarchy with an attributable interest. The burden imposed by this requirement would be

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<sup>2/</sup> These proposed revisions are appropriate to be evaluated and implemented as part of this proceeding. *Spartan Radiocasting Co. v. FCC*, 619 F.2d 314, 321 (4th Cir. 1980) (noting that the Administrative Procedure Act requires only a notice containing "either the terms or substance of the proposed rule or a description of the subjects and issues involved" and citing 5 U.S.C. § 553(b)(3)). Since streamlining Ownership Reports was raised as an issue in this proceeding, substantive recommendations for form changes are appropriate inasmuch as they specifically address efficiency, redundancy, statutory basis, administrative burden or utility.

substantially lessened if a licensee, instead of filing separate reports for each corporate shareholder of a licensee's corporate hierarchy, could file a single Ownership Report for the licensee and all parties with an attributable interest in that licensee. This approach would follow that already used for other forms: in submitting a Form 314, for example, the proposed assignee does not need to file separate forms for each entity in its corporate structure; rather, it describes each of its corporate relationships in the same form. The Commission should enable a licensee filing a mandatory Ownership Report to do likewise. This would greatly simplify the reporting procedure and be more useful to any reviewer by eliminating the need to read multiple reports to aggregate information relating to any licensee.

**B. Ownership Reports Should Not Require the Identification of a Party's Other Attributable Media Interests.**

A primary goal of the Commission is assurance that its licensees are in compliance with the multiple ownership rules. In an Ownership Report, the Commission should simply require a certification of that fact. It collects this information at the time of license transfers and assignments -- it need do no more in an Ownership Report. Consequently, the Commission need *not* require a listing of all a party's media holdings in an Ownership Report.

Under the Commission's Rules, an entity must identify all attributable interests of that entity and its affiliated or parent entities (as well as those of its or their officers, directors, or attributable shareholders) in any regulated media any time it proposes to acquire a broadcast license or licensee. The Commission

sensibly has not proposed to eliminate this requirement from either of its "sale" forms (FCC Forms 314 and 315), as this information is directly relevant to the purpose of those forms. *See Notice* at ¶¶ 30-35 & proposed Form 314 (attached to the *Notice*). In addition, an applicant for a construction permit for a new broadcast station (FCC Form 301) is required to identify its other broadcast interests.

The Commission, however, should eliminate the requirement in the Ownership Report that requires a party again to identify such media interests. *See* FCC Form 323, Questions 6, 9-7 & 9-8. Extensive exhibits detailing all of an entity's (and its related parties') media interests in the Ownership Report are less purposeful than the contour maps that the Commission has proposed to eliminate with regard to the "sale" forms. *See Notice* at ¶ 34. Unlike a showing of overlaps between stations to be commonly owned, any number of easily accessed sources reveal the ownership of a broadcast station -- ranging from private sources, such as BIA Research, to public sources, such as the licensee's most recent FCC Form 314 or 315. Accordingly, as the Commission has proposed with regard to contour maps, it should replace the requirement of a lengthy showing of a party's broadcast interests, *see* FCC Form 323, Question 6, with a straightforward request that the party certify that its media interests are consistent with the Commission's Rules (notably Section 73.3555). At the very least, the Commission should not require a party completing a transaction that has been approved by the Commission to repeat the list of its attributable interests in the *post-consummation* Ownership Report.

**C. The Commission Should Not Require the Filing of Corporate Documents.**

The Commission should eliminate the requirement that corporate documents (i.e., articles of incorporation and by-laws) be filed with the Commission, either as part of Ownership Reports or otherwise. See FCC Form 323, Question 7. There is no statutory basis for requiring such documents, and, as a practical matter, they are irrelevant to the Commission's legitimate interests in assessing the qualifications of licensees.

Instead, the Commission should institute a brief checklist, of the sort proposed by the Commission with regard to sales agreements, see *Notice* at ¶¶ 31-32, that highlights the issues of concern to the Commission with regard to corporate documents, such as the existence of reversionary interests. Stock pledge agreements, for example, are required to be filed and maintained to determine if troublesome restrictions have been placed on the operation of the licensee. Rather than submitting these agreements -- some of which are more than 100 pages in length -- the Commission should simply request a certification that there are not illegal restrictions. This is particularly appropriate for those entities three or four levels removed from a licensee in a corporate structure.

Such a checklist also would ease review by the Commission. Articles of incorporation or by-laws for any particular licensee may be modified any number of times over the years for reasons unrelated to broadcast matters and bear no relation to the licensee's qualifications and operation of broadcast stations except as may be articulated in specific questions. This is even more true with regard to

licensees with four or five tiers in the corporate hierarchy -- each of which is currently required to submit articles and by-laws with no conceivable benefit to the Commission. Under the proposed approach, a licensee, instead of filing each of these lengthy documents with the Commission, would be able simply to certify that its corporate arrangements do not implicate any of the proscriptions described in a Commission checklist. The licensee also should be permitted to supplement its certification with an exhibit describing particular arrangements and explaining why they are consistent with the Commission's Rules in an exhibit to the Ownership Report. If, after reviewing the licensee's responses, the Commission believes further inquiry is necessary, it then may request copies of the relevant documents, and the party would be obliged to respond. *Cf.* 47 C.F.R. § 73.1226 (obliging licensees to make available station logs or records upon request).

This proposal would ease the administrative burdens on licensees and related parties and is essential to any serious attempt to allow electronic filing of Ownership Reports. <sup>3/</sup> By its nature, electronic filing precludes the submission of lengthy corporate documents. Accordingly, unless the requirement for filing such documents is eliminated, licensees cannot hope to file their Ownership Reports entirely through electronic means.

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<sup>3/</sup> Such a change is entirely consistent with that proposed by the Commission with regard to the sales agreements currently required by other of the Commission's forms. *See Notice* at ¶¶ 31-32.

**D. Ownership Reports Should Not Require Antiquated Reporting of the Number of Shares Held.**

The Commission should eliminate any requirement that a licensee identify the total number of shares in a licensee or related entity held by a particular party. The Commission is interested in the voting and equity percentages of relevant parties; it should enable licensees to list such percentages -- and only such percentages -- in their Ownership Reports. It is not necessary for the Commission to waste its resources checking the arithmetic of licensees or to spend extra time attempting to determine equity or voting percentages of various parties. Nor should the Commission need to determine what stock is held in a licensee's treasury: such concerns are totally irrelevant to the Commission's review of the licensee's ownership and should not need to be calculated by licensees seeking to file Ownership Reports.

**E. Ownership Reports Should Not Require Identification of the Residence of Any Cognizable Party to the Respondent.**

Question 9-1 of the existing FCC Form 323 requires that the licensee list the residential address of every officer, director, cognizable shareholder, or partner. Such a requirement is unnecessary as well as invasive. The Commission is informed of such persons' citizenship; it does not need to know the street where they live. There is a licensee address if the Commission needs to contact any particular person or entity. As there is no statutory basis for this requirement, the Commission should delete it from a revised FCC Form 323 (as well as from other forms that request this information).

**II. THE COMMISSION SHOULD CLEARLY DEFINE THE RETENTION PERIODS FOR DOCUMENTS TO BE KEPT IN A BROADCAST STATION'S PUBLIC INSPECTION FILES.**

ACC applauds the Commission's proposals to streamline its forms and processes. As part of this effort to reduce the administrative burdens on licensees, ACC also requests that the Commission clarify the retention periods for each of the documents required to be maintained in a station's public inspection file.

In particular, the Commission should clarify the items that must be kept for the term of the broadcast station's license may be removed when the license is renewed, regardless of when a specific item was placed in the file. <sup>4/</sup> Currently, it is unclear whether an item that was placed in the file midway through a license's eight-year term may be removed as soon as the license has been renewed or instead must remain until eight years after the item was initially placed in the file, even though the license, in the meantime, has been renewed. The latter reading of the rule, of course, makes little sense: once a license has been renewed, documents that relate to a former term have no relevance to the station's renewed license. In fact, such outdated documents, if left in the public inspection file, may only confuse or make it more difficult for a member of the public to review a station's current activities. Because of the ambiguity in the existing regulatory language, however,

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<sup>4/</sup> These comments echo those submitted by ACC in a prior proceeding. See ACC Comments, *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, MM Docket No. 97-138 (May 28, 1997),

licensees may conclude that they are *required* to clutter their public inspection files with outmoded documents. Accordingly, the Commission should resolve the ambiguity as soon as possible so that licensees may be assured that only documents relevant to the current license term -- *i.e.*, those that relate to matters more recent than the station's last license renewal -- need to be kept in a station's public inspection file.

### III. CONCLUSION

For the foregoing reasons, ACC favors either eliminating or replacing with one or more certifications the following requirements in FCC Form 323:

- the requirement that a licensee file separate Ownership Reports for each entity within its corporate organization with an interest in the licensee;
- the requirement that a licensee identify all broadcast ownership interests;
- the requirement that a licensee and related entities have submitted copies of a plethora of business documents to the Commission;
- the requirement that a licensee determine the number of votes -- rather than the percentage of votes and/or equity -- held by any party to the licensee; and
- the requirement that a licensee identify the address of cognizable persons' residences.

As it has in the past, ACC also urges clarification of the retention periods for items in the public inspection file.

Respectfully submitted,

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